

Written information on non-accepted provisions of the Revised European Social Charter

submitted by

AUSTRIA

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Article 2§1 - Reasonable working time

In light of the case law, the following reasons argue against ratifying this provision:

In some special cases, more than 16 hours of continuous daily working time are allowed, particularly in hospitals and pharmacies. As a prerequisite, sufficient rest periods must be available. In particular, the COVID-19 crisis has shown that the possibility of allowing longer working hours under certain circumstances is necessary to maintain the healthcare system. The protection of the health of workers employed in these areas should continue to be ensured by sufficient rest periods.

The reference period for weekly maximum working time (including overtime) is in line with case law requirements, but the collective agreement may define a reference period of more than one year with regard to weekly regular working time (excluding overtime) if this creates recreation periods of several weeks. Since 1 July 2025, employees in hospitals or pharmacies who have signed an opt-out agreement (= an individual declaration of consent for longer weekly working hours) have been subject to an average **weekly working time of 52 hours until 30 June 2028. From 1 July 2028, weekly working hours will be limited to 48 hours (including overtime)**. Employees who have not signed the opt-out agreement are already subject to an average weekly working time of 48 hours. **Accordingly, the average weekly working time for employees in hospitals and pharmacies will be reduced or has already been reduced.** In hospitals, the **standard daily working time is 13 hours**. In certain cases, extended shifts of up to 25 hours are permitted with the consent of the staff bodies if the employee is on call and the actual time worked does not exceed an average of 48 hours over a 17-week calculation period. **Such an extension is only permitted for important organisational reasons, insofar as such an extension is absolutely necessary in the respective organisational unit of the hospital.**

The entire period of readiness for work at a place specified by the employer is considered working time. On the other hand, being on call at a place chosen by the worker is considered a rest period unless the employee is actually called in for work. This distinction is in line with rulings of the European Court of Justice.

Article 4§4 - Reasonable notice for termination of employment

Statutory provisions governing notice periods and dates are laid down in the Austrian Salaried Employees Act (*Angestelltengesetz, AngG*) with regard to white-collar workers, and in the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) with regard to blue-collar workers. Collective agreements also contain provisions on notice periods and dates.

Federal Law Gazette I No. 111/2025 marked a further step toward aligning the notice periods for blue-collar workers with those for white-collar workers.

In principle, the following now applies in accordance with Section 1159 (2) and (4) of the Austrian General Civil Code (ABGB): In the absence of an agreement more favorable to the employee, the employer may terminate the employment relationship at the end of each calendar quarter by giving prior notice. The notice period is six weeks and increases to two months after the completion of the second year of service, to three months after the completion of the fifth year of service, to four months after the completion of the fifteenth year of service, and to five months after the completion of the twenty-fifth year of service. In the absence of an agreement that is more favorable to the employee, the employee may terminate the employment relationship on the last day of a calendar month with one month's notice. This notice period may be extended by agreement to up to six months; however, the notice period to be observed by the employer may not be shorter than the notice period agreed with the employee.

However, termination provisions that deviate from Section 1159 (2) and (4) shall remain in force, if they were newly included in collective agreements between January 1, 2018, and June 30 2025 and published in accordance with Section 14 (3) of the Labour Constitution Act, even if they are less favorable to employees, provided that provisions on notice periods shorter than one week are now replaced by notice periods of one week. If, as a result, a collective agreement now provides for legally effective shorter notice periods and deviating termination dates, the same parties to the collective agreement or their legal successors may continue to stipulate provisions deviating from § 1159 (2) and (4) within the same professional and personal scope of application; However, these may not be less favorable for the employee than the previous provision.

Section 13 of the Domestic Help and Domestic Employee Act (*Hausgehilfen- und Hausangestelltengesetz*) defines a notice period of 14 days for low-level work which can be shortened to one week by agreement.

Notice periods cannot be replaced by severance pay. If notice periods or dates are not observed, employees are entitled to compensation for termination of employment (i.e. remuneration which the employee would have received if the specified notice period and date had been observed).

Temporary employment relationships cannot be terminated. They may be terminated prematurely only upon mutual agreement between the employer and the employee or for good cause.

During the trial period, which must not exceed one month, the employment relationship may be terminated by both parties any time without observing any notice periods and dates and without any particular reason.

In view of the fact that the Committee of Social Rights has come to the conclusion that, for example, a notice period of five days in advance after less than three months of service does not comply with the Charter and, according to Austrian law, the employment relationship may

be terminated without a special reason during the probationary period at any time by both parties without compliance with notice periods and dates and, secondly, with regard to the fact that the notice periods of the Domestic Help and Domestic Employee Act have not been adjusted by the aforementioned Amendments, this provision cannot be ratified.

Public sector:

Federal civil service staff is employed either on a statutory (civil servants) or on a contractual basis (contractual employees). Civil Servants are employed by virtue of a sovereign act called “appointment” (as a rule, appointment is for life), whereas contractual employees are employed based on a working contract.

Statutory provisions governing notice periods and dates are laid down in the Civil Servants Employment Act (*Beamten-Dienstrechtsgesetz 1979 – BDG 1979*) with regard to civil servants and in the Act on Contractual Public Employees (*Vertragsbedienstetengesetz 1948 – VBG*) with regard to contractual employees. § 20 BDG 1979 lays down that the employment relationship ends in the case of different reasons, but termination is only foreseen in case of a provisional employment relationship, due to the special connection of loyalty between the appointed civil servant and the sovereign (federal state).

§ 10 BDG 1979 defines a notice period for provisional employment relationships of

- one calendar month during the first six months of service (trial period),
- two calendar months after completion of the trial period
- three calendar months after completion of the second year of service.

The notice period shall end at the end of a calendar month. During the trial period, termination is possible without giving reasons, later only with giving reasons.

§ 32 VBG lays down that an employment relationship that has lasted uninterruptedly for one year can only be terminated in writing and by stating the reason. The reasons are listed in § 32 VBG.

§ 33 VBG defines a notice period of

- one week during the first six months of service,
- two weeks after six months of service,
- 1 month after one year of service,
- 2 months after two years of service
- 3 months after five years of service
- four months after ten years of service
- five months after fifteen years of service

The notice period shall end at the end of a week, if it is measured in weeks. If it is measured in months, it shall end at the end of a calendar month.

Additionally, the contractual employee shall have a special leave of at least one-fifth of the regular weekly working hours, if the employer terminates the employment (§ 33a VBG).

The provisions for contractual employees are based on the regulations of the private sector and therefore amendments in the private sector are followed up in parallel for the public sector.

Laender-specific information is, by way of example, provided for Upper Austria and Vorarlberg:

In accordance with § 53 of the **Upper Austrian** Act on Contractual State Employees (Oö. Landes-Vertragsbedienstetengesetz - Oö. LVBG) and § 24 (1) of the Municipal Service Law and Salary Act (Oö. Gemeinde-Dienstrechts- und Gehaltsgesetz - Oö. GDG), the employer may only terminate an employment relationship concluded for an indefinite period that has lasted for one year without interruption in writing and stating the reason. The requirement for written form is fulfilled by issuing an electronic termination bearing an official signature.

§ 54 Oö. LVBG and § 25 para. 1 Oö DGD define a notice period of

- one week during the first six months of service,
- two weeks after six months of service,
- 1 month after one year of service,
- 2 months after two years of service
- 3 months after five years of service
- four months after ten years of service
- five months after fifteen years of service

The notice period shall end at the end of a week, if it is measured in weeks. If it is measured in months, it shall end at the end of a calendar month.

While the provisions of civil service law in **Vorarlberg** concerning the dismissal of state employees correspond to the previous interpretation of Article 4(4) by the European Committee of Social Rights, § 107 para. 2 of the State Civil Service Act (Landesbedienstetengesetz – LBedG) foresees the premature termination of administrative internships. According to this provision, the notice period for termination of the internship is ten working days.

Article 6§4 - Collective action

In Austria, the dialogue between the social partners is generally conducive to a climate of communication. It helps to avoid and/or settle conflicts between employees and employers. This is the reason why going on strike is not very common in Austria and why there is no legislation in Austria governing industrial disputes.

Social peace is preserved in particular through social partnership and nationwide collective bargaining agreements. This can be seen, among other things, from the fact that in Austria, in contrast to other countries, only minutes of strike are spoken of.

There is therefore no need for regulation. The explicit anchoring of a right to strike could lead to essential barriers being removed and a strike being called frivolously instead of relying on negotiations.

The Austrian constitution does not contain any provisions on the right to go on strike, nor does it contain a negative evaluation of strikes or restrictions upon them, let alone a ban on strikes. Industrial action is not restricted in any way: there is no ban on strikes or on lock-outs, and there is no limitation of strike action to the trade unions which are considered to be the most representative in their industry. Participation in a strike is not limited to trade union members.

Pursuant to Section 9 of the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz, AIVG*), working in an undertaking affected by a strike cannot be reasonably expected. Section 13 AIVG lays down that workers are not entitled to unemployment benefits if their unemployment is the direct consequence of a strike or defensive lock-out. Hiring out workers to undertakings affected by a strike or lock-out is prohibited in accordance with Section 9 of the Temporary Agency Work Act (*Arbeitskräfteüberlassungsgesetz, AÜG*). Pursuant to Section 10 of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*), such undertakings must not be granted employment permits either.

In the assessment of a strike situation, labour law provisions are primarily applied, but also general civil law and criminal law provisions; however, hardly any courts-of-last-instance rulings exist in this context. The legitimacy of the industrial action as a whole has to be assessed separately from the action of an individual.

With respect to the industrial action as a whole (organisation), Austria takes the position that - apart from a violation of the peace obligation under the collective agreement and a ban on industrial action under a works agreement- such action is only unlawful if it can be classified as causing “unethical damage” pursuant to Section 1295 Para. 2 ABGB. A strike concerning working conditions (in the broader sense), with no disproportionate relationship between the goal of the strike and the damage caused, which addresses the employer and which is organised by a trade union, cannot be considered unethical.

At the level of individual employment relationships, a strike basically constitutes a failure to perform work, which might be a reason for dismissal. However, the relevant grounds for dismissal as defined by Section 82 lit. f of the Industrial Code (*Gewerbeordnung, GewO*) 1859 and by Section 27 no. 4 AngG, i.e. leaving work without permission and persistent negligence of obligations, require that workers are at fault (slight negligence as a minimum) for not meeting their obligations. The right to strike is considered a fundamental right of democratic societies that cannot be withdrawn. Workers who are on strike are, as a rule, convinced that they are exercising their rights, which usually does not constitute a reason for dismissal. On

top of that, in the event of sanctions, the employer is bound by the labour-law principle of equal treatment.

Workers are not entitled to remuneration while they are on strike. If the strike is organised by a trade union, the remuneration lost will usually be made up for by payments from a strike fund.

Civil servants and contractual employees shall perform their official duties faithfully, conscientiously, impartially and in a committed manner in compliance with the legislation in force using the means available to them (§ 43 para. 1 *Beamten-Dienstrechtsgesetz 1979 – BDG 1979* or § 5 *Vertragsbedienstetengesetz 1948 – VBG* in conjunction with § 43 para. 1 BDG 1979). They may only be absent from work for justified reasons (§ 51 BDG 1979 or § 7 VBG). Going on strike is not a justified reason. That implies that, in principle, in the case of civil servants, going on strike is qualified as violation of duty. In the case of contractual employees, an unjustified strike can be a reason for termination of employment depending on the duration of the strike, the extent of the impairment it caused and the default of the contract employee.

However, these provisions must be interpreted in accordance with the European Convention on Human Rights (ECHR). Therefore, there is no general prohibition on strikes for civil servants and contractual employees, but there can be restrictions on the right to strike. In this respect, the right to strike can be restricted if tasks of public authority are exercised. A strike is only qualified as inadmissible if the balancing of interests turns out to be in favour of the stated public interests. Therefore, a minimum service is required and is considered in conformity with Article 6§4.

Furthermore, the question seems to remain a theoretical one thanks to the good partnership and trusting cooperation with the Union of Public Services (*Gewerkschaft Öffentlicher Dienst*).

Article 7§6 - Inclusion of time spent on vocational training in normal working time

In Austria, many young persons take up training in an apprenticeship, which is based on a so-called dual system: apprentices receive on-the-job training at their employer's undertaking and attend classes at a vocational school. The time spent at school is added to their working time.

However, as interpreted by the Committee of Social Rights, this provision is not limited to apprenticeships, but also applies to voluntary vocational training.

Federal Law Gazette I No. 11/2024 stipulates in Section 11b of the Employment Contract Law Adaptation Act (AVRAG) that an employee's participation in training, further education, or continuing education that is required by law, regulations, collective bargaining agreements, or the employment contract, is considered working time. This provision also applies to young

persons, insofar as their employment relationship is subject to the AVRAG, which is the case for apprenticeships.

However, there are no explicit regulations for young persons who complete additional voluntary training directly related to their profession. These additional courses are not usually counted as working time.

As concerns courses for the entrance qualification examination (*Berufsreifeprüfung*), they can be completed during the regular apprenticeship period - not compulsory and also with an extension of the apprenticeship period, taking into account the time spent for this. The *Berufsreifeprüfung*, however, is not an independent vocational training, but complements it with regard to higher general education and the associated general university access.

Article 8§2 – Illegality of dismissal during maternity leave

In Austria, women are protected against termination in all cases where a woman becomes pregnant before she receives the termination notice. This applies regardless of whether the woman

- has already notified the employer of the pregnancy;
- has not notified the employer of the pregnancy but does so after she receives the termination notice;
- was not even aware of her pregnancy at the time when she received the termination notice.

A female worker is not protected against termination, however, when she becomes pregnant during the notice period, i.e. between the date she received the termination notice and the end of the employment relationship. This would be impractical, as the notice period may be several months.

Regarding the termination restrictions for female contractual employees before and after giving birth the same provisions as for the private sector are applicable (§ 32 para. 6 *Vertragsbedienstetengesetz 1948 – VBG*).

Sections 2 to 7 of the Maternity Protection Act (*Mutterschutzgesetz 1979 – MSchG*) apply with the deviations contained in §§ 18a to 23 also for female civil servants and for female contractual employees accordingly.

Therefore, in general, female civil servants and female contractual employees enjoy special protection against dismissal during pregnancy (dismissal during pregnancy and a period of four months after the baby is born shall only be admissible, if the court permits it). This principle, however, does not apply, if the dismissal resulted from a final decision by a disciplinary commission or a disciplinary court, or, if the employment relationship is terminated with the

power of law (§ 22 MSchG). Disciplinary law is the addition to the general indissolubility of the employment relationship of a civil servant. The assessment of the existence of a violation of duty is left to the disciplinary authority.

Article 15§2 - Employment of persons with disabilities

The relevant law governing the employment of persons with disabilities (the Disability Employment Act – “Behinderteneinstellungsgesetz” – BEinstG) requires, in Section 2(2) no. 3 in relation to third-country nationals, authorization to reside in Austria and pursue employment, provided that these third-country nationals are treated equally to Austrian citizens with regard to the conditions of dismissal under European Union law. This provision is based on the case law on the Association Agreement between the EU and Turkey, according to which equal treatment of workers also covers working conditions, including dismissal. According to the case law of the ECJ, the term “dismissal” also includes termination of employment, which is why the equal treatment required under EU law presupposes status of “registered persons with disabilities” and special protection against dismissal within the meaning of the BEinstG must be granted.

This implements the legal requirements adopted at EU level (Directive on third-country nationals), which provide for equal treatment of EU and third-country nationals in relation to working conditions, including dismissals. This applies, for example, to the most recently adopted Directive (EU) 2024/1233 of the European Parliament and of the Council of April 24, 2024, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. Information on implementation in Austria can be found in Section 25a of the BEinstG.

The stricter criteria specified by Austria in relation to Article 15§2 of the European Social Charter in the BEinstG (residence and work permits and equal legal status on the basis of EU law) therefore relate to status of “registered persons with disabilities” and the associated legal consequences (protection against dismissal and compensation tax). However, they do not affect access to subsidies. These can also be granted to persons without a status of “registered persons with disabilities” to a large extent under the conditions of Section 10a(2) BEinstG.

In addition to comprehensive protection against discrimination of persons with disabilities in the field of employment under the BEinstG, which also benefits third-country nationals, Austria supports the employment of persons with disabilities who are legally resident in Austria in a variety of ways and provides considerable financial assistance through state support measures. In addition, in implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), Austria is implementing a series of inclusive employment measures, which are enshrined in Chapter 5 of the National Action Plan on Disability 2022–2030.

Article 18§3 - Liberalising regulations

Ratifying Art. 18§3 continues to be impossible, as Europe's diversely developed economic ecosystems combined with ever-changing economic circumstances require flexible instruments to keep Austria's labour market within reasonable balance. A liberalisation only commitment would disable Austria to adapt its admission policy to capacity. As the percentage of foreign workers in the labour market in Austria is already one of the highest among EU and OECD countries, commitment to a liberalisation only policy regarding access to the labour market for Council of Europe member states does not seem possible for the foreseeable future, as significant differences in economic levels still persist.

Article 19§4 - Equality regarding employment, right to organize and accommodation

This provision is **complied with** in terms of working conditions and trade union membership **but not in terms of accommodation as far as nationals of Contracting Parties outside the EEA are concerned.**

The Committee of Social Rights has criticised the unequal treatment of nationals of Contracting Parties to the Charter who are lawful residents or are properly employed when it comes to housing subsidies under Article 16.

The Government of Styria, for example, provides housing subsidies based on the Styrian Housing Support Act (Steiermärkisches Wohnunterstützungsgesetz - StWUG). In order to ensure social compatibility of this funding while respecting budgetary resources, the access to this funding was recently restricted, including further requirements for third-country nationals.

Article 19§8 - Guarantees regarding deportation

A ratification of Art. 19(8) cannot be considered as the provision defines endangering and/or "offending against public interest" and security as the only reasons for deportation and the Committee of Social Rights restricts its applicability by additionally requiring individual checks on behaviour or situations.

It should be noted that the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals sets out clear guidelines, particularly for forced return, which Member States are bound to follow.

Furthermore, a tight network of preconditions has been created over the past decade for issuing return decisions (for third-country nationals) and deportations (especially EEA citizens)

that goes far beyond this, in particular if there are general reasons for refusal (no accommodation according to local standards, no health insurance, inability to sustain themselves, no integration agreement, political reasons) or if there are circumstances constituting an administrative offence (marriage/adoption of convenience).

Additionally, the Austrian Federal Office for Immigration and Asylum is the body which makes decisions as a first-instance authority, and only the second-instance authority, i.e. the Federal Administrative Court, is a court as required by the Committee.

Due to the tense migration situation in Austria, these major obstacles cannot be removed for the time being, rendering ratification impossible.

Article 19§10 – Equal treatment for the self-employed

Reference is made to the Committee of Social Rights' criticism of Austria's family reunification regulations (Art. 19§6).

The Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz) does not differentiate between self-employed and employed persons with regard to the right to family reunification. Employed persons can immigrate via the Red-White-Red Card (Rot-Weiß-Rot-Karte). Family members are granted a Red-White-Red Card Plus (Rot-Weiß-Rot-Karte plus).

However, for persons who are self-employed on a not entirely short-term but nevertheless only temporary basis, "only" a residence permit for "self-employed persons" ("Aufenthaltsbewilligung "Selbständiger"") is provided for. Family reunification is not possible for this residence permit, as it does not allow permanent immigration to Austria. This would conflict with Art. 19 (10) in conjunction with (6) of the revised Social Charter.

Article 19§11 - Teaching the language of the host state

This provision is complied with as regards children who are still subject to compulsory education.

The Public Employment Service offers job-specific German courses for unemployed people registered with the PES.

Furthermore, the Austrian Integration Fund (*Österreichischer Integrationsfonds* - ÖIF) offers German language courses for asylum seekers and beneficiaries of subsidiary protection, as well as for Ukrainian displaced persons, in accordance with Section 4 of the Integration Act (IntG), "until they achieve a language proficiency level of at least B1 according to the Common European Framework of Reference for Languages."

The Integration Agreement (Section 7 et seq. IntG) serves to integrate third-country nationals lawfully residing in Austria (i.e., non-EU citizens, persons not entitled to asylum or subsidiary protection) and aims to enable them to participate in social, economic, and cultural life in Austria. Upon receiving their residence permit pursuant to § 8(1) lit. 1, 2, 4, 5, 6, 8, 9, or 10 of the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz - NAG), third-country nationals undertake to acquire, within two years (24 months), knowledge of the German language, as well as of the democratic system and the values of the legal and social order derived therefrom.

The ÖIF language portal (www.sprachportal.at) offers a comprehensive range of learning resources and online German courses (A1-B2) available free of charge from Monday through Saturday in 12 languages. In addition, the language portal offers learners over 5,000 exercises, 500 instructional videos and audio files to learn and improve their German anytime and anywhere. Apart from language courses offered by the ÖIF, Austria-wide measures are offered by the Federal Ministry of Education and the 9 *Laender* (according to Art. 15a B-VG) that are financed with the help of funds from the European Social Fund.

Young people and adults who live in Austria, regardless of their origin and educational background, are given the opportunity to acquire basic skills free of charge even after completing their school-based training phase; i.e. the labour market status does not matter. In the area of basic education, skills in the German language (speaking, reading, writing), mathematical and digital skills and, if necessary, basic skills in another language (speaking, reading, writing) are promoted. In addition, learning competence is integrated as an indispensable element in the educational offer so that participants can exploit their potential and achieve the agreed learning goals.

In **Styria**, for example, the “Starting Point German” (Startpunkt Deutsch) contact point was established by the Province of Styria, the City of Graz and the ÖIF. Based on individual consultations and transparent placement tests, this contact point facilitates a needs-oriented selection from the range of German language courses offered throughout Styria.

The state of **Vorarlberg** promotes literacy and German language courses for adult asylum seekers (including young people aged 15 and over) as part of its basic services. Adults who have been granted asylum or subsidiary protection (including young people aged 15 and over) are supported by the federal government on the basis of the Integration Act as part of the “Start Package German and Integration” (literacy and German courses) and through online courses via the Austrian Integration Fund. Third-country nationals who are subject to the Settlement and Residence Act and who must demonstrate sufficient German language skills in order to extend their residence permit receive financial support from the federal government through the district authorities for the necessary German courses when they first settle in Austria. Third-country nationals who are registered with the PES as job seekers are supported by the PES if they need further training (German).

Vorarlberg provides funding for “low-threshold German courses for women in the cities/municipalities/regions” for catch-up integration. For educational reasons, a small fee has to be paid for these courses.

From April 2026 to March 2028, the state of Vorarlberg is implementing an ESF project aimed at improving the language and professional skills of women with a migrant background and refugee women. Acquiring German language skills and obtaining a certificate of completion is a central component of the project.

Articles 21 and 22 - Right of workers to be informed and consulted and the right to take part in the determination and improvement of working conditions and the working environment

These Articles were not ratified because the rights to information, consultation and participation can, pursuant to the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) 1974, Federal Law Gazette no.22 as amended, and the Agricultural Labour Act (*Landarbeitsgesetz, LAG*), only be exercised by the works council, i.e. they are not guaranteed in undertakings where the prerequisites for establishing a works council exist but none has been established (very small undertakings with up to 4 employees, which are not required to have a works council, may be exempt from the applicability of these Articles pursuant to clause 6 of the Appendix to Articles 21 and 22).

With regard to the **safety and health of workers**, the possibility of workers to exercise their right to participation is independent of whether or not a works council exists. Sections 10 to 13 of the Health and Safety at Work Act (*ArbeitnehmerInnenschutzgesetz - ASchG*) lay down that, under the conditions specified in these provisions, workers must participate in all issues regarding the safety and health of workers, even if no bodies representing the workers exist. Therefore, the requirements of **Article 22 lit. a are partly met** (improvement of working conditions and the working environment), **those of lit. b are fully met** (protection of health and safety within the undertaking), and those of **lit. d are partly met** (as far as the participation in issues regarding the protection of workers is concerned).

As regards the public sector at Laender level, the Styrian Provincial Staff Representation Act 1999 (*Stmk. Landespersonalvertretungsgesetz 1999 – LPVG 1999*) for example contains comprehensive information and participation rights for staff representatives. The staff representation is called upon to protect and promote the professional, economic, social, cultural, and health interests of employees. In the case of measures affecting the health interests of employees or the quality of the workplace, agreement must be reached with the staff representation.

With respect to the other areas governed by Articles 21 and 22, however, Art. I(2) has to be taken into account, which lays down that these Articles are deemed complied with if the provisions are applied to the majority of workers, i.e. 80% of the workers in the public and

private sectors according to the case law of the Committee of Social Rights. Articles 21 and 22 (except for safety and health) can be ratified only if at least 80% of all workers employed by undertakings which are required to establish a works council are actually represented by a works council.

According to a 2022 survey commissioned by the Chamber of Labor, 57 percent of employees in Austria work for companies that have a works council or another representative body. In companies with more than 1,000 employees, 93 percent of employees have a works council or another representative body. In companies with one to four employees, however, the figure is only 22 percent.

Article 23 - Right of elderly persons to social protection

Austria's focus regarding policies for senior citizens is to ensure their right to have a say in politics and to create opportunities for older persons to be an equal partner in all issues and areas that concern them, with the first priority being to maintain and/or improve their quality of life.

This is achieved, for example, by means of the **Federal Senior Citizens Act** (*Bundesseniorenengesetz*), the Austrian **Federal Senior Citizens Advisory Board** (*Bundesseniorenbeirat*), the **general focus on offers for senior citizens**, the **implementation of the Federal Plan** for Senior Citizens or the **funding of projects**. The aim of the **Federal Senior Citizens Act** is to ensure that funds are made available for the provision of advice, information and the care of senior citizens by the major senior citizens' organisations and to promote their quality of life. The Federal Ministry of Labour, Social Affairs, Health, Care and Consumer Protection (BMASGPK) subsidises the services provided by senior citizens' organisations to the older generation throughout Austria every year through programmes and measures with more than EUR 2 million per year. In concrete terms, the Federal Government allocates EUR 1 for each senior citizen to senior citizens' organisations, i.e. EUR 2.7 million in total, for providing advice, information and activities.

In addition, in the form of the **Federal Senior Citizens Advisory Board** an appropriate body was established to represent the interests of the older generation at a national level. With its 35 members (representatives of senior citizens, ministries, the *Laender* and local authorities), the Federal Senior Citizens Advisory Board advises the Federal Minister and serves as an indispensable platform for discussing issues which concern older persons. This means, on the one hand, that the Federal Senior Citizens Advisory Board gives senior citizens the opportunity to contribute their ideas and experiences and thus influence social life at a political level, and on the other hand, it enables politicians to discuss any given challenges with representatives of the older generation and to jointly resolve current problems.

The **Austrian Senior Citizens Council** is incorporated by law and serves as the umbrella association of the senior citizens organisations. It is on an equal footing with the statutory interest groups representing employees, businesses and farmers when it comes to matters concerning the interests of senior citizens in Austria, meaning that Austria has a **statutory interest group representing senior citizens**.

Last but not least, the Federal Senior Citizens Act allows for the funding of **specific projects** geared towards maintaining and/or improving the quality of life, by, for example, **awarding a National Quality Certificate to old-people's homes and nursing homes**. Creating this certificate was a measure to ensure the right to appropriate care and services, the right to privacy, the right to personal dignity as well as the right to participate in setting and, if necessary, enhancing the living conditions in such homes. It aims to make quality and residents' rights visible and to create an incentive to further advancing the service quality and focusing on the quality of life of persons in old-people's homes and nursing homes.

Furthermore, the Federal Senior Citizens Act is the basis for the **Federal Plan for Senior Citizens** (*Bundesseniorenplan*). In 2012, the Austrian government and parliament adopted the first medium- and long-term federal plan for senior citizens called "Ageing and the future" (*"Altern und Zukunft"*). The federal plan is based on a comprehensive scientific analysis and was developed jointly with all relevant societal stakeholders (federal ministries, the *Laender*, the Austrian Association of Cities and Towns and the Austrian Association of Local Authorities, the Austrian Senior Citizens Council as the umbrella organisation of senior citizens' organisations). The main goal of the Federal Senior Citizens Plan is to create, maintain or enhance the quality of life of all older persons or individual groups among them. In particular, the aim is to mitigate inequalities and encourage older persons to be active. The plan includes goals and recommendations in 14 areas. These areas are: Social and political participation, the economic situation, older workers and "work" in old age, health, education, older women, generations, Housing conditions, technology and mobility, care, social security, the media, discrimination, violence and exclusion, older migrants, infrastructure.

Austria has implemented numerous measures in recent years and decades across the key thematic areas of the Federal Senior Citizens Plan to enhance the quality of life of older persons, in particular by promoting their social participation and their independence and dignity in older age.

In addition to comprehensive federal strategies for safeguarding the quality of life of elderly people, the participation of senior citizens is also a focus in the *Laender*. The Styrian Senior Citizens Act (*Steiermärkisches Seniorinnen und Seniorengesetz*), for example, aims to guarantee the representation of senior citizens' concerns in political decision-making and to provide sufficient advice, information and support. For this purpose, senior citizens receive a subsidy per person. Furthermore, several municipalities have established senior citizens' advisory councils as appropriate bodies to represent the interests of the older generation (for example in the city of Graz).

The state of Vorarlberg attaches great importance to providing the best possible support for home care and relieving the burden on family caregivers. This is made possible primarily by outpatient services such as home nursing, mobile assistance services, and many other providers. It is also achieved through state subsidies such as the state subsidy for home care and nursing, the additional state subsidy for 24-hour care in addition to the existing federal subsidy, and the subsidy for the Red Cross emergency call service.

In the area of primary prevention for older and aging people, Vorarlberg also offers a wide range of decentralized opportunities for socializing, education, participation, exercise, social integration, etc. through senior citizens' associations, local authorities, church organizations, ARGE Seniorentanz (senior citizens' dance group), clubs, community centers, adult education providers, and many more.

Despite numerous measures taken by the Ministry of Labour, Social Affairs, Health, Care and Consumer Protection (BMASGPK) and/or other authorities in Austria, a **ratification of Article 23** is still **viewed critically due to the personal scope of the Charter**, in particular **due to the Committee of Social Rights' criticism regarding Article 16** - unequal treatment of third-country nationals (i.e. non-EEA nationals) of the Contracting Parties to the Charter as concerns housing subsidies, and regarding **Article 13§1** - waiting period for third-country nationals of Contracting Parties to the Charter when it comes to entitlement to social assistance.

Article 24 - Right to protection in cases of termination of employment

Private sector:

Ratifying this provision would require substantial changes in Austria as, under Austrian law, a specific reason has to be indicated only in the case of dismissal without prior notice (*Entlassung*) of an employment relationship. Termination of an employment relationship (*Kündigung*) does not require specific reasons in order to be justified (principle of free terminability).

Special protection against termination of employment, which allows the employer to terminate an employment relationship only on the basis of certain facts or situations, only exists for certain groups of employees. Special protection against termination applies, for example, to workers' representatives, workers on parental leave and parents working part-time, employees on full-time or part-time family hospice leave, workers doing national service or alternative civil service, persons with disabilities and persons subject to victim assistance.

Public sector:

In the case of contractual employees, an employment relationship that has lasted uninterruptedly for one year can only be terminated by stating a reason (§ 32 para. 1 *Vertragsbedienstetengesetz 1948 – VBG*). The reasons are laid down in § 32 para. 2 and 4 VBG

and concern reasons connected with the capacity, conduct, required trainings or pension entitlements of the contractual employee or are based on the operational requirements of the service. The decisions of the labour and social courts for cases from the private sector also point the way for individual cases in the employment law of contractual employees.

In the case of civil servants, there are no provisions for the termination of the employment relationship, except for provisional employment relationships. Except for the trial period, the termination of a provisional employment relationship is only possible if a reason for termination exists. Termination of civil servants shall be possible in the case of reasons connected with their capacity or conduct or based on the operational requirements of the service (§ 10 para. 3 and 4 Beamten-Dienstrechtsgesetz 1979 – BDG 1979).

Regarding article 24 (Right to protection in cases of termination of employment) and article 27§3 (Illegality of termination of employment on the grounds of family responsibilities) the following can be reported:

The Second Amendment to the Civil Servants Employment Law in 2022, Federal Law Gazette I No. 205/2022, transposed the EU Directive 2019/1158 on work-life balance for parents and carers and the EU Directive 2019/1152 on transparent and predictable working conditions in the European Union into federal civil service law: For civil servants in a provisional employment period or for contract employees, the law specifies reasons or circumstances on the basis of which they may not be dismissed (use of teleworking, reduction of regular weekly working hours for childcare, part-time work for caregiving purposes, permissible secondary employment, early parental leave, leave for caregiving, or a request for information on the employment relationship) (see section 10 para. 5 and section 79b BDG 1979 or section 32 VBG).

It establishes also an obligation for the employer to provide (written) reasons for termination upon request of the civil servant (this also applies to terminations during the probationary period; see section 10 para. 6 BDG 1979 or section 32 para. 8 VBG), and a rule of evidence in favor of the civil servant in cases where the termination is contested, if the civil servant claims to have been terminated for the aforementioned reasons (section 10 para. 7 BDG 1979 or section 32 para. 9 VBG).

State employees are subject to the applicable state civil service law. In **Vorarlberg**, for example, a state employee can generally be dismissed without giving a reason during the first five years of employment, subject to the notice periods. After at least five years of employment, extended protection against dismissal applies, according to which the employment relationship can only be terminated by the employer if a reason is given. Special protection against dismissal also applies to persons on early parental leave (Frühkarenz), parental leave or part-time employment for the purpose of caring for a child, as well as for persons on family leave and persons in civil or military service.

In **Styria**, in the case of employment relationships lasting up to one year, dismissal is possible without giving a reason. In the case of longer-term employment relationships, there is special protection against dismissal; dismissal is only possible in writing and with a stated reason. Any resulting claims can be asserted through legal channels.

Article 26§2 - Moral harassment

In its ruling of 26 November 2011, 9 ObA 131/11x, the Austrian Supreme Court of Justice (OGH) firmly established the definition of bullying (Mobbing) along the lines of (German-Swedish industrial and organisational psychologist) Heinz Leyman's interpretation of the term as conflict-laden communication in the workplace between colleagues or superordinates and subordinates, where the attacked person is the underdog and is directly or indirectly attacked by one or several persons systematically, frequently and over a prolonged period with the objective and/or the result of being expelled from the employment relationship and where the vulnerable person perceives this as discriminatory. Bullying is characterised by systematic, marginalising and ritual behaviour over a prolonged period of time.

Austria's labour law contains a wide range of elements that can be applied to the phenomenon of bullying.

The employer's duty of care encompasses the rights of workers to privacy. Employers must ensure that the private and personal sphere of workers is not affected by bullying. If employers become aware of any vulnerability, they must immediately take appropriate remedial action. In doing so, they are basically free to choose the means; the instruments available (ranging from issuing warnings to dismissal) are to be used in accordance with the principle of proportionality. If the employer culpably fails to take remedial action, this constitutes grounds for the employee to claim compensation from the employer for negligence. This has been upheld by several OGH rulings (e.g. 9 ObA 131/11x of 26 November 2011, 9 ObA 13/16 of 21 February 2013).

The Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) lays down that voluntary works agreements may be concluded that govern measures for the protection of workers' health and/or humane working conditions. In addition, employees can contest the termination of employment pursuant to Section 105 Para. 3 no. 1 lit. I *ArbVG* on grounds of obviously not unjustified assertion of claims from the employment relationship which are denied by the employer if the worker asks the employer for remedial action in the case of bullying and, as a consequence, is dismissed for this very reason. (8 ObA 53/14y of 25 November 2014).

Health and safety at work legislation contains provisions on phenomena such as stress, violence or bullying in the workplace in the context of employee protection. According to the Health and Safety at Work Act (*ArbeitnehmerInnenschutzgesetz; ASchG*), bullying, stress and physical violence in the workplace are particularly relevant as psychological stress factors in

occupational health and safety, and as such they need to be covered by the necessary measures and be taken into account in the organisation of occupational health and safety in an undertaking.

With the ASchG amendment, Federal Law Gazette I No. 118/2012, the obligation of employers to include occupational psychological aspects in occupational health and safety was expressly clarified and specified more precisely: Psychological strain caused by mental stress and hazards at work is not limited to stress and work pressure, but also includes incidents of violence, sexual harassment, derogatory remarks, and workplace bullying:

- The legal materials (GP XXIV RV 1983) emphasize the relevance of psychological stress in employee protection and expressly also the necessary awareness-raising process among those responsible in the companies, as required in Art. 26§2 of the Charter. It is expressly made clear that dangers as defined in the ASchG also include psychological stress and health (Section 2, Paragraph 7 and 7a ASchG); at the same time, the use of industrial psychologists as additional support in companies is emphasized.
- Employers are expressly obliged to take measures to protect life and health and to protect the integrity and dignity of employees. Employees are obliged to apply these measures and must behave in such a way that a hazard is avoided as far as possible, which also includes observing the dignity and integrity of others at work (Section 3 (1) and Section 15 (1) ASchG). Protection against physical and verbal violence, especially sexual harassment in the workplace, is addressed, contradicting behavior is frowned upon.
- Mental stress at work must be included in the job evaluation (§ 4 ASchG) and the principles of risk prevention must be taken into account during planning - "human factor" at work, social relationships, work organization, etc. The evaluation must also be updated after incidents with increased work-related psychological stress - e.g. after incidents of violence or sexual harassment, incidents of bullying can also be an occasion to review or take preventive measures. The legal materials list as incidents that can trigger an acute psychological stress reaction inter alia the accumulation of conflicts or complaints, violent attacks, and post-traumatic stress disorder after an accident at work.
- The task of the safety specialists and the occupational physicians is also to advise and support the employers in structuring the work processes so that psychological stress (including possible incidents of violence and the like) is kept as low as possible and its health-damaging effects are weakened.

After the amendment of the ASchG (valid since 1.1.2013), the focus of safety and health protection at work in accordance with Art. 26 is now on raising awareness of violence, bullying, etc. in the workplace, information and support in operational implementation (as part of the evaluation of work-related psychological stress) as well as integration in relevant specialist areas (e.g. industrial psychology, occupational medicine).

For the earliest possible operational prevention, the Labour Inspectorate and other institutions active in occupational safety (e.g. Chamber of Labours, VIDA trade union / "Tatort Workplace") have developed information materials, practical aids and guidelines as well as

good practices on how to deal with violence in the workplace (see respective websites). For labour inspection, for example:

- [Gewalt am Arbeitsplatz](#)
- https://www.arbeitsinspektion.gv.at/Uebergreifendes/Good_Practice/Good_Practice.html

In key campaigns by the Labour Inspectorate, work-related psychological stress also includes violence in the workplace, conflicts, bullying and sexual assault at work, e.g. in the annual focus areas for 2023-2024 on violence as an occupational hazard:

- [https://www.arbeitsinspektion.gv.at/Agenda/Agenda/2023 - 2024-Gewalt als Berufsrisiko-.html](https://www.arbeitsinspektion.gv.at/Agenda/Agenda/2023_-_2024-Gewalt_als_Berufsrisiko-.html)

When the labour inspectorate visits companies, the prevention of violence is a recurring advisory and review topic in connection with the workplace evaluation of psychological stress (this also includes incidents of violence, bullying in the workplace, Section 4 (5) ASchG). Labour inspectors receive continuous training.

In the multi-annual Austrian occupational health and safety strategies, in which key occupational health and safety actors collaborate in Austria (especially social partners, research institutions, labour inspectorate, general accident insurance institution - AUVA), the prevention of psychological stress, violence and bullying is a work focus, among others a project entitled "Prevention of violence at work" was developed by the Central Labour Inspectorate together with the social partners (starting in 2022, final report in 2027/2028):

- [https://www.arbeitsinspektion.gv.at/Uebergreifendes/Arbeitsschutz - Allgemeines/OeAS Projekte/Praevention von Gewalt in der Arbeit.html](https://www.arbeitsinspektion.gv.at/Uebergreifendes/Arbeitsschutz_-_Allgemeines/OeAS_Projekte/Praevention_von_Gewalt_in_der_Arbeit.html)

The Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*) bans harassment in the workplace based on gender, ethnic origin, religion or belief, age and sexual orientation. Harassment as defined by the *GIBG* and bullying are not identical, but harassment may take the form of bullying.

Bullying and harassment as defined by the *GIBG* overlap to some extent, but not every act of bullying constitutes harassment as defined by the *GIBG*, as the latter has specific characteristics. Furthermore, a typical feature of bullying is its repeated occurrence, whereas harassment may occur only once.

The *GIBG* prohibits any harassment of employees by their employer or by third parties (e.g., colleagues or customers). In addition, employers are obliged to take appropriate remedial action in the event of harassment of their employees by third parties. The *GIBG* sets forth an entitlement to compensation by the employee both from the harasser (irrespective of establishing fault) and the employer (if the employer does not promptly take appropriate remedial action), including non-material damages (at least EUR 1,000) as well as balancing the burden of proof. The *GIBG* does not stipulate a comprehensive obligation on the part of the

employer to protect third parties from harassment. This provision does not correspond to the ECSR's interpretation of the employer's obligation to take remedial action.

In the event of bullying that is not considered harassment as defined by the *GIBG*, compensation can only be claimed in accordance with the General Civil Code (*ABGB*). In that case, it has to be established who is at fault and the plaintiff has the burden of proof.

According to the ECSR's interpretation, employers must be held accountable for all cases of harassment that take place on their premises, regardless of whether it is an employee or a third party (whether perpetrator or victim). Under civil law, effective protection of those affected requires a shift in the burden of proof in favor of the victim, which would have massive effects on claims for damages under the *ABGB*.

In the **public sector** there is a wide range of statutory provisions concerning the phenomenon of bullying.

The Civil Servants Employment Act 1979 (*Beamten-Dienstrechtsgesetz 1979 – BDG 1979*) lays down that civil servants shall treat their employees, superiors and colleagues with respect and shall contribute to the proper functioning of the working cooperation. Civil servants shall refrain from behaviour or the creation of working conditions that violate or intend to violate the human dignity of superiors, employees and colleagues. This is also applicable for behaviour or the creation of working conditions that are discriminatory in any other way (§ 43a BDG 1979). These regulations are also applicable to contractual employees via § 5 para. 1 of the Act on Contractual Public Employees (*Vertragsbedienstetengesetz 1948 – VBG*).

The Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz – B-GIBG*), which is applicable for the public sector, is the equivalent to the Equal Treatment Act (*Gleichbehandlungsgesetz – GIBG*), which is applicable for the private sector. It lays down that everybody shall be treated equally in the context of an employment relationship irrespective of gender, ethnic origin, religion or belief, age and sexual orientation. It bans harassment in the context of an employment relationship based on gender, ethnic origin, religion or belief, age and sexual orientation. Any direct or indirect discrimination as well as any instruction to discriminate according to the relevant provisions by an employee violates the obligations arising from the employment relationship and is to be prosecuted in accordance with the employment and disciplinary regulations.

According to the Federal Labour Protection Act (*Bundes-Bedienstetenschutzgesetz – B-BSG*) the employer shall take the measures necessary to protect the life, health, integrity and dignity of the employees (§ 3 para. 1 B-BSG). Employees shall apply the protective measures required to protect life, health, integrity and dignity under this Federal Act and the regulations issued for it. They have to behave in such a way that a hazard is avoided as far as possible (§ 15 para. 1 B-BSG). The definition of the term health includes physical and mental health (§ 2 para. 11a B-BSG).

The *Laender* also foresee protection of personal rights of state employees.

In **Styria**, for example, the service law contains an explicit prohibition of bullying (§ 31 of the Law on the service and remuneration rights of employees of the Province of Styria - Stmk. L-DBR). Acts of bullying constitute a breach of official duties and result in disciplinary action for civil servants. In addition, the Styrian Equal Treatment Act 2023 (Steiermärkisches Landes-Gleichbehandlungsgesetz 2023 – StLGBG 2023) prohibits any unequal treatment in the workplace on the basis of gender, ethnic origin, religion or belief, age, and sexual orientation. Any direct or indirect discrimination, as well as any instruction to discriminate in accordance with the relevant provisions by an employee, violates the duties arising from the employment relationship and is to be prosecuted in accordance with the provisions of employment law.

According to § 51 para. 3 of the **Upper Austrian** Civil Service Law (Landesbeamtengesetz – LBG) in Conjunction with § 6 para. 2 Upper Austrian Act on Contractual State Employees (Öö. Landes-Vertragsbedienstetengesetz - Öö. LVBG) and § 51 para 3 LBG, both civil servants and contract employees are obliged to treat their superiors, employees, colleagues, and customers with respect and to behave appropriately towards them. In order to tackle the problem of bullying more effectively, the prohibition of bullying has been standardized as a duty of office, the violation of which is punishable under disciplinary law. In addition, supervisors also have a duty of office to ensure that abuses are remedied. In addition to various information brochures, conflict prevention, and educational work, a conflict management counseling center has been set up for state employees in the Human Resources Department of the Upper Austrian State Government, which can be used anonymously, confidentially, and free of charge by telephone or in person.

Article 27§3 - Illegality of termination of employment on the grounds of family responsibilities

Workers who take parental leave or work part-time in accordance with the Maternity Protection Act (*Mutterschutzgesetz, MSchG*), the Parental Leave for Fathers Act (*Väter-Karenzgesetz, VKG*) or similar provisions, are basically protected against termination of employment and dismissal for four weeks after their leave has ended; beyond this period, the principle of free terminability applies.

Persons on full-time or part-time family hospice leave are protected against termination of employment for four weeks after the leave.

The employment of persons on full-time or part-time nursing care leave must not be terminated on grounds of taking full-time leave or part-time work (*Motivkündigungsschutz*).

"With Federal Law Gazette I No. 115/2023, this protection against dismissal for improper motives (*Motivkündigungsschutz*) was also established for cases of leave for care (*Pflegefreistellung*) in accordance with Section 16 of the Annual Leave Act.

Furthermore, it was legally stipulated that employees who have sought or taken leave for care (*Pflegefreistellung*), nursing care leave (*Pflegekarenz*) or part-time care leave (*Pflegezeit*), or a reduction in normal working hours in accordance with §14 (1) Z 2 of the Employment Contract Law Adaptation Act (AVRAG) due to care obligations for close relatives that are not only temporary, can demand a justification from their employer in the event of termination. The employee must request the written justification within five calendar days of receiving the termination, otherwise they will lose their right to receive it. The employer must provide the written justification within five calendar days of receiving the request. The fact that a written justification has not been provided is irrelevant to the legal validity of the termination. The purpose of the obligation to provide reasons is to enable employees to assess whether a lawsuit before the labor and social court could be successful as a result of protection against dismissal for improper motives. Regardless of this, legal action may be taken against the dismissal regardless of whether a written statement of reasons was requested and what reasons the employer gives.

Section 3 of the Austrian Equal Treatment Act (*GlBG*) bans any discrimination in the workplace on grounds of their sex, in particular with reference to the employee's marital status or the fact whether someone has children. This means that, for example, whether or not someone is married or lives in a registered same-sex partnership or has children must not be cause for discrimination. The prohibition of discrimination also includes the prohibition of discriminatory termination of an employment relationship.

The prohibition of discrimination therefore also covers discrimination on grounds of child care obligations, regardless of which parent has assumed these obligations. In this context, both the (biological) sex of a person and their gender (i.e. the role an individual assumes in society) must be taken into account. A man who is discriminated against for assuming child care obligations has adopted the predominantly female role of child rearing and can therefore assert discrimination on grounds of sex/gender. The Vienna Higher Regional Court (*Oberlandesgericht Wien, OLG Wien*) handed down a pertinent ruling on 23 May 2013, 8 Ra 13/13k. It found that disadvantaging a man because he has taken paternity leave can in fact be considered discrimination. Senate I of the Austrian Equal Treatment Commission also classifies discrimination of men on grounds of their child care obligations as discrimination on grounds of sex/gender.

In the event of discriminatory termination by the employer, the affected person may challenge the termination in court. In this case, there is no claim for damages. However, the affected person may also assert the termination against themselves and sue for material and immaterial damages in court. It seems questionable whether this regulation complies with the requirements of ECSR for compensation mentioned in the evaluation.

Federal Law BGBl. I No. 115/2023 implemented Directive (EU) 2019/1158 on work-life balance for parents and family caregivers. As part of this amendment, the GlBG was amended by introducing a new Section 5a, which came into force on November 1, 2023. According to this, discrimination within the meaning of Part I of the GlBG (Equal Treatment between Women

and Men in Employment and Occupation) also exists if a person is discriminated against in connection with

- parental leave, parental part-time work, and changes to working hours in accordance with the Maternity Protection Act or the Paternity Leave Act, as well as paternity leave in accordance with the Paternity Leave Act,
- leave of absence pursuant to Section 8 (3) of the Salaried Employees Act or Section 1154b (5) of the Austrian Civil Code (ABGB) for urgent family reasons preventing attendance at work, if illness or accident requires immediate presence,
- leave of care within the meaning of Section 16 (1) to (4) of the Annual Leave Act,
- the rights arising from Sections 14 (1) Z 2 to 14d of the Employment Contract Law Adjustment Act (reduction of working hours, end-of-life care, care for seriously ill children, nursing care leave, part-time care).

The newly introduced protection against discrimination does not require that the discrimination be based on gender.

Public sector:

In the case of contractual employees, an employment relationship that has lasted uninterruptedly for one year can only be terminated if a reason for termination exists (§ 32 para. 1 *Vertragsbedienstetengesetz 1948 – VBG*). Family responsibilities are not included in the reasons, which entitle the employer to terminate the employment relationship (§ 32 para. 2 VBG). Furthermore, regarding the termination restrictions for female contract employees before and after giving birth, the same provisions as for the private sector are applicable (§ 32 para. 6 VBG).

In the case of civil servants, there are no provisions for the termination of the employment relationship, except for provisional employment relationships. Except for the trial period, the termination of a provisional employment relationship is only possible if a reason for termination exists. Therefore, family responsibilities are no reason for the termination of the employment relationship. For further information, please refer to the remarks on Art. 24.

Furthermore, the relevant sections of the Maternity Protection Act (*Mutterschutzgesetz 1979 – MSchG*) and the Parental Leave for Fathers Act (*Väter-Karenzgesetz – VKG*) also apply for civil servants and for contractual employees accordingly as well as the jurisdiction to notice protection out of certain motives. In addition, there is a special provision for civil servants and contractual employees. In contrast to the private sector, during the special protection against termination during pregnancy (during pregnancy and a period of four months after the baby is born), an employment relationship of a civil servant or a contractual employee cannot be legally terminated, even with the consent of the court (§ 20 MSchG). The same applies to the duration of a special protection against termination during maternity or paternity leave or part-time employment according to the MSchG or VKG.

On Laender-level in Styria, for example, family obligations do not constitute grounds for dismissal under the state's employment law. In addition, the special protective provisions of the Styrian Maternity Protection and Parental Leave Act apply.

The same applies to the duration of special protection against dismissal during maternity or paternity leave or part-time employment under the Styrian Maternity Protection and Parental Leave Act. Special protection against dismissal applies during pregnancy and for four months after the birth.

In **Vorarlberg**, persons who take early parental leave (Frühkarenz), parental leave (Elternkarenz), or part-time employment (Teilzeitbeschäftigung) to care for a child may not be dismissed. Protection against dismissal begins when the application is submitted, but no earlier than four months before the start of the leave, and ends four weeks after the end of the leave, the respective part of the leave, or the part-time employment. In the case of part-time employment, protection against dismissal ends in any case four weeks after the child reaches the age of four. Similarly, persons on family hospice leave enjoy protection against dismissal until four weeks after the end of their leave.

The State's Anti-Discrimination Act (ADG) stipulates, among other things, that discrimination on the basis of gender, in particular with regard to marital status or whether someone has children, is prohibited.

If an employment relationship has been terminated or ended prematurely by the employer in violation of the prohibition of discrimination, the employee concerned may assert the invalidity of the termination (Section 9 (4) ADG).

The fulfillment of other family obligations is not covered by the protection against dismissal provided by the State Civil Service Act (Landesbedienstetengesetz – LBedG 2000) or the Anti-Discrimination Act.

Article 29 - Right to information and consultation in collective redundancy procedures

This provision was not ratified in 2011 because it was only considered to have been complied with by the private sector. As Council Directive 98/59/EC on collective redundancies does not apply to workers employed in the public administration or at institutions under public law, no corresponding steps were taken towards its transposition in legislation applicable to public sector employees.

In its first report on non-accepted provisions, the Committee noted that in the public sector there is an individual procedure in place but not on "collective redundancy", therefore individual procedures apply also to collective ones.

Another reason for non-acceptance of this provision is the following:

According to the case law of the committee, consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.

Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers

Section 109 of the ArbVG provides that, in the event of late information to the works council, the arbitration board must additionally compensate the disadvantages that employees have suffered as a result of the late information when drawing up the social plan.

According to Section 160 (1) ArbVG, the administrative fine is € 2,180.

Whether this provision is sufficiently deterrent is questionable against the background of the case law.

Article 30 - Right to protection against poverty and social exclusion

The areas addressed by Article 30 are also within the competence of the *Laender* and/or the local stakeholders. Therefore, a consensus between all these stakeholders is required.

Nonetheless, combating poverty and social exclusion are matters of particular concern to Austria's Federal Government. The Austrian Federal Government is committed to the principle of poverty reduction through the European Pillar of Social Rights and takes its responsibility to create opportunities for an independent and self-determined life seriously. This is also reflected in the current government program 2025-2029. A special focus is drawn on combating child poverty, as avoiding poverty as early as possible and promoting social mobility are important building blocks for guaranteeing equal development opportunities from the start, as well as for preventing the risk of poverty and social exclusion later in life. Generally, Austria has a very well-developed welfare state that provides comprehensive protection against social risks and has a strong poverty-reducing effect.

Reacting to the COVID-19 pandemic, the inflation and cost of living crisis, numerous additional crisis support measures particularly for those hit the hardest have been and are being implemented to cushion the negative socio-economic effects caused by the crisis.

Nevertheless, **ratification of Article 30** is still viewed critically due to the personal scope of the Charter, in particular due to the **Committee of Social Rights' criticism regarding Article 13§1**.

Article 31 - Right to housing

The Austrian Federal Government has already committed – through the signing of the **Lisbon Declaration** on the European Platform on Combatting Homelessness in June 2021 – to work towards **ending homelessness by 2030**. In its Government Programme 2025-2029, the Federal Government has substantively committed to the objectives enshrined in Article 31, in particular with regard to ensuring affordable rents, strengthening housing security, and combatting housing exclusion and homelessness. The Government program contains a **commitment to the “Housing First” principle**, which is to be further advanced. The programmes *WOHNSCHIRM Miete* and *WOHNSCHIRM Housing First* of the Ministry of Labour, Social Affairs, Health, Care and Consumer Protection contribute to this, in addition to the existing support services provided by the federal states, by preventing evictions on the one hand and by combating homelessness in accordance with the Housing First approach on the other. Nationals of other contracting states are also able to make use of these support services. The programme is currently limited until the end of 2026; an extension is presently under political coordination.

In this context, Austria continues to be committed to the creation of sufficient affordable housing. Austria's policy in combating homelessness has often been highlighted as a best-practice example at an international and European level. Numerous low-threshold projects to combat homelessness, often carried out in cooperation with NGOs, in combination with subsidised housing, which is of great importance in Austria, constitute a successful mix of measures.

As a result, the situation in Austria is mostly a notably better one than in other (European) countries.

Laender-specific information is, by way of example, provided for Styria, Upper Austria and Lower Austria:

Styria

Preventing and combating poverty is a central social and socio-political goal in Styria. Based on federal legal principles laid down in the Social Assistance (Principles) Act (*Sozialhilfe-Grundsatzgesetz - SH-GG*), the Styrian Social Support Act (*Steiermärkisches Sozialunterstützungsgesetz - StSUG*) was enacted. Due to budgetary and capacity constraints the StSUG was recently tightened focusing the (re)integration into the labor market. In addition, the State of Styria provides housing support in the form of a monetary subsidy based on the Styrian Housing Support Act (*Steiermärkisches Wohnunterstützungsgesetz - StWUG*).

The defined group of eligible persons, which is partly derived from federal legal principles of the SH-GG, does not reflect the personal scope of the Charter and contradicts the criticism of the Committee of Social Rights concerning unequal treatment of third-country nationals of Contracting Parties in comparison with Austrian nationals.

Upper Austria

The availability of adequate affordable housing in Upper Austria is guaranteed on the one hand by the system of non-profit housing and on the other hand by the supplementary requirements for the construction of affordable housing within the framework of housing subsidies. This is achieved, for example, through requirements regarding building specifications, maximum construction cost limits, and maximum burden limits to be observed with regard to the financing components for calculating rent. The realization of subsidized housing projects is ensured by an annual construction program for subsidized rental apartments averaging approximately 2,000 residential units. Even in times of sharply rising construction and energy costs, construction output has been maintained at the same or even higher levels through supplementary support measures from the housing department.

In addition to the construction of rental apartments, the creation of home ownership, both for single-family homes and condominiums, is also supported in the form of subsidies for bank loans, resulting in an attractive low interest rate of 1.5% for the subsidy recipient for a period of 10 years.

Lower Austria

One of the key objectives of the Province of Lower Austria is to reduce the risk of poverty and social exclusion and to combat homelessness.

The Lower Austrian Social Support Implementation Act (NÖ Sozialhilfe-Ausführungsgesetz) entered into force on 1 January 2020. It implements the Social Assistance (Principles) Act (Sozialhilfe-Grundsatzgesetz – SH-GG).

In accordance with the principle of subsidiarity, social support in Lower Austria is granted to people who are unable to secure their living expenses by their own means. Standard rates adopted on an annual basis ensure a uniform and transparent eligibility threshold within the social support system.

Pursuant to the principle of subsidiarity, social support is granted only to people who are willing to work, except for those who are unable to do so for social or medical reasons.

Poverty prevention measures in Lower Austria also include various counselling and social work, implemented in cooperation between federal and district authorities and non-governmental organisations (NGOs). Counselling is regarded as an essential instrument in preventing and combating homelessness.

In Lower Austria, NGOs, local and district authorities, and private local shelter providers have established a close-knit network pursuant to the Social Support Act (NÖ Sozialhilfegesetz 2000). This network provides counselling and, where appropriate, accompaniment for

homeless persons, as well as shelter and support for their social and labour market reintegration.

Facts and figures, as well as relevant developments for the period 2007–2024, are available in the Social Report section of the official website of the Province of Lower Austria (https://www.noe.gv.at/noe/Sozialhilfe/NOe_Sozialberichte.html).